IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 28150 of 2007(A)

OS.277/2006 OF I ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

CICILY, W/O LATE E.K.POULOSE,
ELLICKAPARAMBIL HOUSE, HOUSE NO.40/5024,
BROADWAY, BANERJI ROAD JUNCTION,
ERNAKULAM.

BY ADV. SRI.DINESH R.SHENOY.

RESPONDENT:

E.K.ANTONY, S/O LATE E.K.KOCHAPPU,
ELAKUNNAPUZHA HOUSE, 44/1095,
L.F.C.ROAD, KALOOR, KOCHI-17.

BY ADV. SRI.A.T.ANILKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.28150/2007-A:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. NO. 277/2006.

EXT.P.2: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S. NO. 277/2006, SUB COURT, ERNAKULAM.

EXT.P.3: COPY OF THE PETITION FOR RE-OPENING EVIDENCE, I.A. NO. 5754/2007.

EXT.P.4: COPY OF THE PETITION FOR DIRECTION TO PRODUCE DOCUMENTS I.A. NO. 5753/2007.

EXT.P.5: COPY OF THE PETITION FOR ISSUANCE OF SUMMONS TO WITNESSES, I.A. NO. 5755/2007.

EXT.P.5.A: COPY OF THE LIST OF WITNESSES.

EXT.P.6: COPY OF THE LOAN SANCTION LETTER DTD. 28/07/2002, UNITED BANK OF INDIA.

EXT.P.7: COPY OF THE AGREEMENT DTD. 07/06/1998.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.28150 OF 2007

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Dated this the 1st day of November 2007

JUDGMENT

This writ petition is filed for a direction to the I Addl.Sub Court, Ernakulam to issue certified copies of the orders passed in Exts.P4 and P5 applications to the petitioner and then to allow the same and also for transfer of O.S.No.277 of 2006 from I Addl.Sub Court, Ernakulam to any other court. So far as Exts.P4 and P5 applications are concerned, the prayer in I.A.No.5755 of 2007 is to issue summons to two witnesses along with a prayer for production of documents. So far as one witness is concerned, the court held that the witness is present in the court with the defendant and so summons need not be issued and so far as the second witness, the Bank Manager is concerned, the court held that it is totally irrelevant. In I.A.No.5754 of 2007 the court held that since the document sought to be summoned is not a specific document and that the plaintiff is not the custodian of it, it cannot be allowed. Regarding the transfer of O.S.No.277 of 2006, it is averred that the learned Sub Judge is not fair and that the client will not get justice from the Sub Court. So far as I.A.No.5755/2007

is concerned, it is fairly submitted that only permission may be granted to examine the witness and the defendant will produce the witness. It is permitted. So far as the Bank Manager is concerned, I feel that the court has reached a conclusion even before what is sought to be proved is analyzed. Learned counsel for the petitioner submits that the statement of accounts in respect of the loan sanctioned is necessary to prove her case. I feel that an opportunity need not be shut out and therefore I permit the Bank Manager to be summoned for production of document and giving evidence. So far as the prayer in I.A.No.5754/2007 is concerned, the summons may be issued to the plaintiff to produce document and if it is not available with him, he is always at liberty to file an affidavit to that effect and thereafter one cannot compel him to do it. But, if it is proved at a stage that the said document is in his custody and it is not produced, then necessarily as adverse inference may be drawn. These are all matters which the court has to consider at the stage of hearing. So, the said prayer is also allowed.

2. Now coming to the last prayer, the transfer of O.S.No.277 of 2006. The judicial system has its own sound basement and it is the experience that it is normally carried out judiciously and without any bias. Quite often it takes place in court rooms, some difference of opinion or heated exchange of words between the court and counsel or between the counsel and counsel

and one shall not feel that it will take away the basic discipline which the system has got. If indiscriminate transfer of cases is done on merely one party expressing no faith in the Judicial Officer, the system itself may crumble and unless there are exceptional sound reasons, ordinarily the case shall not be transferred. It is equally important that Judge presiding over the court also has to have the balance of mind because it is a settled principle that not only justice should be done, but it should be seemed to be done also. Creating unnecessary apprehension in the mind of a party always goes to the root of the credibility of the system. I am confident that whatever has transpired in the court on prior occasion has to be forgotten and the matter to be disposed of after hearing both sides, to their satisfaction. I make it clear that I am not casting any blame on the Judge or the counsel for the parties. These observations are made by me only for the better interest of the system. The mere allegations and suspicion shall not be a ground for transfer of a case and therefore I decline to transfer the case.

In the result, the writ petition is disposed of as follows: The orders in I.A.Nos.5754 & 5755/2007 are set aside and the petitioner is permitted to summon the witnesses and also to direct the plaintiff to produce certain documents as prayed for. The court shall give a reasonable time for summoning the documents and give sufficient time for the plaintiff to

produce documents and thereafter complete the evidence and give sufficient time for argument and dispose of the matter in accordance with law, forgetting what had earlier transpired in the court.

M.N.KRISHNAN, JUDGE

Cdp/-